

No. 14713

**United States
Court of Appeals**
for the Ninth Circuit

BESSIE ROTH,

Appellant,

vs.

SAMMY DAVIS, JR.,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California,
Central Division.**

FILE

AUG 24 1955

PAUL R. O'BRIEN,



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

VIVIAN M. FELD,
WM. JEROME POLLACK,

6361 Wilshire Blvd.,
Los Angeles 48, Calif.

For Appellees:

HULEN C. CALLAWAY,
JOHN S. BOLTON,

210 W. 7th St.,
Los Angeles 14, Calif.



In the United States District Court for the Southern
District of California, Central Division

No. 17562

BESSIE ROTH,

Plaintiff,

vs.

WILL MASTIN TRIO, SAMMY DAVIS, JR.,
SAMMY DAVIS, WILL MASTIN, DOE I-X,

Defendants.

COMPLAINT

(Damages for Personal Injuries)

Plaintiff complains of defendants above named
and each of them as follows:

I.

Defendants are citizens and residents of the State
of California; plaintiff is a citizen and resident of
the State of Ohio.

II.

This is an action and controversy between citizens
of different states involving an amount in excess of
\$3,000.00, exclusive of interest and costs.

III.

The true names or capacities, whether individual,
corporate associate or otherwise, of defendants Doe
I-X are unknown to plaintiff, who therefore sues
said defendants by such fictitious names. When the
true names, identities or capacities of such [2*]

*Page numbering appearing at foot of page of original Certified
Transcript of Record.

fictitiously designated defendants are ascertained, plaintiff will ask leave of court to amend this complaint to insert said true names, identities or capacities, together with the proper charging allegations. Plaintiff is informed and believes and thereon alleges that each of the defendants sued herein as a Doe is responsible in some manner for the events and happenings herein referred to, and caused injury and damages proximately thereby to the plaintiff as herein alleged.

IV.

Plaintiff is informed and believes and thereon alleges that at all of the times mentioned herein, defendants, and each of them, were the owners of the motor vehicle referred to in this complaint and generally described as a 1954, black, Cadillac convertible automobile.

V.

Plaintiff is informed and believes and thereon alleges that at all times mentioned herein the defendant, Sammy Davis, Jr., was the agent, servant and employee of his said co-defendants, and was acting within the time, place, purpose and scope of the said employment and agency.

VI.

Plaintiff is informed and believes and thereon alleges that at all times mentioned herein the defendant, Sammy Davis, Jr., was driving the aforementioned vehicle with the consent and permission and knowledge of his said co-defendants.

VII.

At all times herein mentioned Kendall Drive was a public street and highway in the County of San Bernardino, State of California.

VIII.

On or about November 19, 1954, plaintiff was riding as a passenger in a 1954, four-door Chrysler automobile which was being operated by one Helen S. Boss in a southerly direction on Kendall [3] Drive in said county and state, at and near its intersection with Verdemont Junction, about nine miles north of San Bernardino, California.

IX.

At said time and place the defendants, and each of them, so negligently and carelessly maintained, drove and operated their said automobile that the same was caused to and did then and there hit, strike and collide with the automobile in which plaintiff was riding as a passenger, thereby proximately causing the injuries and damages to plaintiff hereinafter alleged.

X.

As a direct and proximate result of the aforesaid negligence and carelessness of the defendants, and each of them, the plaintiff was permanently hurt and injured in her health, strength and activity, sustaining severe shock and various injuries to her person, all of which said injuries have caused and continue to cause plaintiff great mental, physical

and nervous pain and suffering and which said injuries the plaintiff is informed and believes and thereon alleges will result in permanent disability to the said plaintiff, all to her damage in the sum of \$75,000.00.

XI.

As a direct and proximate result of the aforesaid negligence and carelessness of the defendants, and each of them, the plaintiff was compelled to and did employ physicians and surgeons to examine, treat and care for her and did incur medical and hospitalization expenses and incidental expenses, and plaintiff is informed and believes and thereon alleges that plaintiff will necessarily by reason of said injuries require additional doctor and medical care and incidental expenses.

XII.

At the time of said collision, plaintiff was capable of working and earning money. As a direct and proximate result of the [4] aforesaid negligence and carelessness of defendants, and each of them, plaintiff was prevented from working and earning money and from attending to her usual occupation and plaintiff is informed and believes and thereon alleges that she will thereby be prevented from attending to said usual occupation and from working and earning money for a long period in the future.

Wherefore, plaintiff prays for judgment against defendants and each of them as follows:

1. For general damages in the sum of \$75,000.00;
2. For all doctor, medical, hospitalization and incidental expenses according to proof;
3. For all loss of earnings according to proof;
4. For all costs of suit;
5. For such other and further relief as to the court may seem proper.

VIVIAN M. FELD,
WM. JEROME POLLACK,
By /s/ VIVIAN M. FELD,
Attorneys for Plaintiff.

[Endorsed]: Filed December 6, 1954. [5]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Come Now Will Mastin, Sammy Davis, Sr., and Sammy Davis, Jr., a co-partnership doing business under the fictitious name of Will Mastin Trio, and Sammy Davis, Jr., individually, and for answer to plaintiff's complaint admit, deny and allege as follows:

I.

Answering paragraph I of plaintiff's complaint—

a) Admit that defendants Sammy Davis, Jr., and Sammy Davis, Sr., are residents of the State of

California, but alleges that Will Mastin is a resident of the State of New York;

b) Defendants have no information or belief upon the citizenship and residence of the plaintiff sufficient to enable them to answer the allegations on that subject in said paragraph I contained, and upon that ground deny generally and specifically [6] said allegations concerning the citizenship and residence of plaintiff.

II.

Answering paragraph II these answering defendants allege that they have no information or belief upon the subject sufficient to enable them to answer the allegations in said paragraph contained and upon this ground deny the same both generally and specifically.

III.

Answering paragraph IV these answering defendants deny the allegations contained both generally and specifically, except that these answering defendants admit that Sammy Davis, Jr., was the owner of the motor vehicle therein described.

IV.

Answering paragraphs V and VI these answering defendants deny the allegations therein contained both generally and specifically.

V.

Admit the allegations contained in paragraph VII.

VI.

These answering defendants admit the allegations contained in paragraph VIII, except that these answering defendants have no information or belief upon the subject of the status of the plaintiff in the Chrysler automobile and upon this ground deny said allegations generally and specifically.

VII.

Answering paragraph IX these answering defendants deny the allegations therein both generally and specifically, except admit that there was a collision between the automobile in which the plaintiff was riding and the automobile being driven by Sammy Davis, Jr. [7]

VIII.

These answering defendants deny generally and specifically each and every allegation set forth in paragraphs X, XI and XII charging negligence and carelessness of these answering defendants, or either or any of them.

These answering defendants allege that they have no information or belief sufficient to enable them to answer each, every and all of the remaining allegations set forth in said paragraphs X, XI and XII and upon this ground denies generally and specifically—

a) That the plaintiff was injured or damaged in the manner or to the extent alleged, or in any other manner, or to any extent, or at all;

b) That the plaintiff suffered damages in the sums alleged in said paragraph X, or in any other sums, or at all;

c) That the plaintiff was compelled to or did incur medical expenses as alleged in said paragraph XI;

d) That the plaintiff was or will be required, by reason of said injury, to require additional doctor and medical care and incidental expenses as alleged in paragraph XI;

e) That the plaintiff suffered a loss of her earnings as alleged in paragraph XII, either in the past or in the future;

f) Each, every and all of the allegations in said cause of action contained, and not hereinbefore admitted or denied.

Further Answering Plaintiff's Complaint and by Way of a Separate and Affirmative Defense, Defendants Allege:

That said alleged accident, or injury, or damage, or any or either thereof was occasioned or caused, or in any manner contributed to by these answering defendants, or any carelessness, negligence, fault or liability on the part of these answering [8] defendants, their agents, servants or employees, or either or any of them.

Further Answering Plaintiff's Complaint and by Way of a Second, Separate and Affirmative Defense, Defendants Allege:

That the said alleged accident, or injury, or damage, or either or any thereof, was an unavoidable accident and was not caused or occasioned, or in any manner contributed to by these answering defendants, or by any carelessness, negligence, fault or liability on the part of these answering defendants, their agents, servants or employees, or any or either of them.

Further Answering Plaintiff's Complaint and by Way of a Third, Separate and Affirmative Defense, Defendants Allege:

These answering defendants are informed and believe, and upon such information and belief allege, that at the time and place mentioned in said complaint, the plaintiff failed to govern and control her movements in a reasonable manner commensurate with the alleged existing conditions, and by her failure to exercise ordinary care and caution, as aforesaid, for her own safety or welfare, or to avoid the happening of said alleged accident, injury or damage, if any, did thereby directly and proximately contribute to the happening of said alleged accident, injury or damage complained of, and to each and all and the whole thereof.

Wherefore, these answering defendants pray that plaintiff take nothing by her complaint: that these defendants have judgment for their costs incurred

herein; and for such other and further relief as to the Court may seem proper.

HULEN C. CALLAWAY,
JOHN S. BOLTON,
By /s/ HULEN C. CALLAWAY,
Attorneys for Defendants.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 28, 1954. [9]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find in favor defendant, Sammy Davis, Jr., individually.

Dated: Los Angeles, California, January 20, 1955.

/s/ EARL SHIRK,
Foreman of the Jury.

[Endorsed]: Filed January 20, 1955. [11]

In the United States District Court, Southern
District of California, Central Division

No. 17,562-BH Civil

BESSIE ROTH,

Plaintiff,

vs.

WILL MASTIN TRIO, SAMMY DAVIS, JR.,
SAMMY DAVIS, WILL MASTIN, et al.,

Defendants.

JUDGMENT ON VERDICT

On the 18th day of January, 1955, this cause came on for trial before the court and a jury duly impaneled on said day; Vivian M. Feld and William Jerome Pollack, appearing as counsel for the plaintiff; and Hulen C. Callaway and John S. Bolton, appearing as counsel for the answering defendants, Will Mastin, Sammy Davis, Sr., and Sammy Davis, Jr., a co-partnership doing business under the fictitious name of Will Mastin Trio, and Sammy Davis, Jr., individually; and the trial having been proceeded with on the 18th and 19th days of January, 1955, before the court and said jury, and during the trial of said cause, testimony having been adduced and exhibits admitted in evidence, and the parties having rested, the cause was continued to the 20th day of January, 1955; and

On the 20th day of January, 1955, the respective counsel having argued to the jury, and the court having instructed the jury on the law, and said

cause was submitted to the jury for its consideration and verdict; and after consideration thereof, the jury thereafter on said 20th day of January, 1955, having returned into court, and after presenting its verdict, which was read by the clerk, the court ordered said verdict filed and entered, and is as follows: [12]

* * *

Now, therefore, by virtue of the law and by reason of the premises aforesaid,

It Is Ordered, Adjudged and Decreed:

That the plaintiff, Bessie Roth, recover nothing by reason of this action, and that the complaint be and is dismissed, and that the defendant, Sammy Davis, Jr., individually, recover his costs herein taxed in the sum of \$189.71.

It Is Further Ordered, on motion of counsel for the plaintiff, that this cause be and it is hereby dismissed as to the remaining defendants, Will Mastin, Sammy Davis, Sr., and Sammy Davis, Jr., a co-partnership doing business under the fictitious name of Will Mastin Trio, and the fictitious named defendants.

Dated: Los Angeles, California, January 21, 1955.

/s/ BEN HARRISON,
U. S. District Judge.

[Endorsed]: Filed and entered January 21, 1955. [13]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Plaintiff moves this Court to set aside the verdict and judgment herein and to grant a new trial of the above-entitled cause for the following reasons, viz.:

1. The verdict is contrary to law.
2. Insufficiency of the evidence to support the verdict in that under the defendant Sammy Davis, Jr.'s own testimony, under the physical facts attendant the collision and under all of the evidence the negligence of defendant Sammy Davis, Jr., was at least a proximate cause of the collision and of plaintiff's injuries.
3. The verdict is against the weight of or contrary to the evidence.
4. Error of the court in refusing to admit in evidence plaintiff's exhibit and testimony of a prior consistent statement of plaintiff made by plaintiff to a representative of the defendants. This exhibit and the statements contained therein would have proved a prior consistent statement of the plaintiff and was admissible by [14] reason of the fact plaintiff had been impeached on cross-examination by defense counsel.
5. Error of the court in restricting plaintiff's cross-examination of Mrs. Roth and admonishing counsel with respect to his method of cross-examination with regard to said witness.

6. Error of the court in instructing the jury with the following instructions, which instructions were requested by defendants and which were objected to by plaintiff on the ground that said instructions were outside the issues of the case:

(a) Instruction #37, requested by defendants and given by the court as follows: "In law we recognize what is termed an unavoidable or inevitable accident. These terms do not mean literally that it was not possible for such an accident to be avoided. They simply denote an accident that occurred without having been proximately caused by negligence. Even if such an accident could have been avoided by the exercise of exceptional foresight, skill or caution, still, no one may be held liable for injuries resulting from it."

(b) Defendants' requested instruction #52 given by the court as follows: "Defendants were not the insurers of plaintiff's safety and did not guarantee that she would not be injured. Nor can you presume said defendants were negligent merely because the plaintiff was injured."

(c) A second instruction on unavoidable accident requested by defendants and given by the court which instruction plaintiff is unable to identify at the time of making this motion.

Dated: January 28, 1955.

/s/ WM. JEROME POLLACK,
Attorney for Plaintiff. [15]

Points and Authorities

Prior consistent statements are admissible.

Davis v. Tanner,

(1927), 88 Cal. App. 67, 262 Pac. 1106;

People v. Kynette,

(1940), 15 Cal. (2d) 731, 104 P. (2d) 794;

Bickford v. Mouser,

(1942), 53 Cal. App. (2d) 680;

People v. Slobodian,

(1948), 31 Cal. (2d) 555, 191 P. (2d) 1.

It was error for the court to instruct on unavoidable accident.

Huetter v. Andrews,

91 Cal. App. (2) 142.

It was error to instruct the jury that the defendants were not insurers of the safety of plaintiff. Such an instruction is given only in the case of common carriers.

Receipt of copy acknowledged.

[Endorsed]: Filed January 28, 1955. [16]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR DISMISSAL AND
TO VACATE JUDGMENT AND ORDER
SHORTENING TIME

Defendants and Hulen C. Callaway and John S. Bolton, Their Attorneys, Please Take Notice that

on February 28, 1955, at 10:00 a.m. or as soon thereafter as counsel can be heard, in the courtroom of Judge Harrison in the above-entitled court at the Federal Building, Los Angeles, California, plaintiff will move the court for leave to dismiss the within action without prejudice. At said time and place plaintiff will further move the court for an order vacating the verdict and judgment heretofore entered in the above-entitled matter.

Said motions will be based upon the ground that the court has no jurisdiction because there is no complete diversity of citizenship.

Said motions will be based upon all the papers and pleadings on file herein and on the points and authorities attached hereto.

Dated: February 23, 1955.

/s/ VIVIAN M. FELD,
Attorney for Plaintiff. [18]

ORDER SHORTENING TIME

Good cause appearing therefor, It Is Hereby Ordered that plaintiff may serve a copy of the notice of motion for dismissal and to vacate judgment on the defendants' attorneys by 4:00 p.m. on Thursday, February 24, 1955.

Dated: February 24, 1955.

/s/ LEON R. YANKWICH,
Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed February 24, 1955. [19]

[Title of District Court and Cause.]

MINUTES OF THE COURT—FEB. 28, 1955

Present: Hon. Ben Harrison,
District Judge.

Proceedings: For hearing (1) motion of plaintiff for new trial, pursuant to motion and points and authorities, filed Jan. 28, 1955; and motion (2) of plaintiff for dismissal and to vacate judgment, filed Feb. 24, 1955.

Attorney Pollack makes a statement in support of motion (2) of plaintiff for dismissal and to vacate judgment.

Court makes a statement and Orders motion (2) denied.

Attorney Pollack argues in support of motion (1) of plaintiff for new trial, etc.

Court makes a statement and Orders motion for new trial denied.

EDMUND L. SMITH,
Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Bessie Roth, plaintiff in the above-entitled matter, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the verdict and judgment entered in this action on January 21, 1955, granting judgment in favor of defendant Sammy Davis, Jr., and from the denial on February 28, 1955, of plaintiff's

motion for leave to dismiss said action without prejudice and to vacate said judgment.

Dated: March 14, 1955.

/s/ VIVIAN M. FELD,
Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 15, 1955. [23]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS
UPON WHICH SHE INTENDS TO RELY

Appellant, plaintiff in the above-entitled action, intends to rely upon the appeal of the above-entitled action upon the following points:

1. That the court did not have jurisdiction of the above-entitled matter in that there was not complete diversity of citizenship and no federal question was involved;

2. That it was error for the court to enter the judgment against plaintiff in the above-entitled matter in that the court did not have jurisdiction of said matter inasmuch as there was lacking complete diversity of citizenship and no federal question was involved.

Dated: March 15, 1955.

/s/ VIVIAN M. FELD,
Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 15, 1955. [25]

In the United States District Court for the Southern
District of California, Central Division

No. 17562-BH

BESSIE ROTH,

Plaintiff,

vs.

WILL MASTIN TRIO, et al.,

Defendants.

Deposition of Bessie Roth, taken on behalf of the defendants, at 1018 Marco Place, in the City of Los Angeles, California, commencing at 10:00 a.m. on Thursday the 6th day of January, 1955, before Alice E. Kuppert, a Notary Public in and for the County of Los Angeles, State of California, pursuant to the annexed Stipulation, under Sections 2021 and 2055 of the Code of Civil Procedure of the State of California.

Appearances of Counsel:

For the Plaintiff:

WILLIAM JEROME POLLACK, ESQ.

For the Defendant:

HULEN C. CALLAWAY, ESQ., and
JOHN S. BOLTON, ESQ.

Thursday, January 6, 1955, 10:00 A.M.

BESSIE ROTH

the plaintiff herein, called as a witness by and on

(Deposition of Bessie Roth.)

behalf of the defendants, having been first duly sworn, deposed and testified as follows:

Mr. Callaway: Can it be stipulated, Mr. Pollack, that this deposition is being taken in case number 17562-BH in the United States District Court for the Southern District of California, Central Division, the title being Bessie Roth, Plaintiff, versus Will Mastin Trio, et al., Defendants?

Mr. Pollack: Yes.

Mr. Callaway: And can it further be stipulated that all questions that are propounded to the witness may be answered and that objections except as to the form of the question may be reserved until the time of the trial?

Mr. Pollack: Well, are you including or excluding such questions as I may instruct her not to answer?

Mr. Callaway: Only as to the form of the question. I'm trying to make this convenient for you and for your client. If I ask a question that you object as to the form, make it now so I will have an opportunity to change it. [3*]

Mr. Pollack: Yes, oh sure.

Mr. Callaway: All other objections——

Mr. Pollack: ——are saved for the time of trial.

Mr. Callaway: Yes. Is that so stipulated?

Mr. Pollack: That's right.

Mr. Callaway: And also it is stipulated that the testimony of the plaintiff may be taken and that there is no question about the notice as to time and place?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Bessie Roth.)

Mr. Pollack: That's correct.

Do you think we ought to have a further stipulation that this deposition be available for use in the other cases that are pending?

Mr. Callaway: So stipulated. In the State Courts you mean?

Mr. Pollack: Yes, and do you think that at the proper time we can describe those cases? They're all the cases now pending in the Superior Court of Los Angeles.

Mr. Callaway: Well, Mr. Bolton, do you want to read a description of them in the record? You have them there.

Mr. Pollack: Draw a separate stipulation which we will sign, but you will make a record of it that there is.

Mr. Bolton: The first case is titled Charles Head, Plaintiff, versus Helen S. Boss, Bessie Roth, Doe One [4] and Two, et al. The number is 637075, Los Angeles Superior Court. Then the case of Sammy Davis, Junior, Plaintiff, versus Helen S. Boss, et al., Los Angeles Superior Court number 637074.

I don't know whether I have the number of your case.

Mr. Callaway: Well, she has that. That's the principal case.

Mr. Pollack: What he means is he doesn't have the Superior Court number. We're taking this in the Bessie Roth case. He's talking about the Helen Boss case.

Mr. Callaway: Well, I have it.

(Deposition of Bessie Roth.)

Mr. Pollack: Anyway, we understand that it is all the cases that are pending between those parties and we also have a further stipulation that this stipulation shall not be construed as a consent to consolidate any of the cases pending in Superior Court.

Off the record.

(Discussion off the record.)

Mr. Callaway: I will stipulate that this will not be considered as a consent to consolidate.

Mr. Pollack: All right. I think we are ready to roll.

Mr. Callaway: That doesn't mean that I am not going to move to consolidate the cases.

Mr. Pollack: Not only that, but chances are [5] I will be perfectly willing that they be consolidated.

Mr. Callaway: I'm not trying to bind you by that.

Mr. Pollack: All right.

Direct Examination

By Mr. Callaway:

Q. Your name is Bessie Roth?

A. Yes, sir.

Q. Where do you reside, Mrs. Roth?

A. Akron, Ohio.

Q. And have you ever had your deposition taken before? A. No, sir. [6]

* * *

Q. All right. Now, be sure that if you don't understand my questions to tell me so, because I can always reframe them until you do understand.

(Deposition of Bessie Roth.)

Where do you live in Akron, Ohio?

A. 360 Parkwood Avenue.

Q. And how long have you lived there?

A. Well, I have lived there—I've been with this friend of mine——

Q. You do not need to give me any explanation. All [7] you need to tell me is how long you have lived there.

A. Six years.

Mr. Pollack: That is the way to answer the question. Just answer the question. Otherwise, we will never get through.

Q. (By Mr. Callaway): Let me ask you, when did you leave Akron?

A. The 15th of November.

Q. And what was your destination?

A. Los Angeles, California.

Q. When you left to come to California did you intend to return to Akron?

A. Yes, sir.

Q. When?

A. In the spring.

Q. And were you coming out here on business or on pleasure?

A. Oh, I intended to work here.

Q. In what line of work?

A. Practical nursing.

Q. How long did you intend to work?

A. Well, until about the 1st of May.

Q. Did you have any particular purpose for returning to Akron?

A. No.

Q. Well now, as I understand it, you came [8] out here with a Mrs. Boss?

A. Yes.

Q. Did you know here before you decided to leave Akron? A. No.

Q. And is it correct that you answered a newspaper advertisement? A. Yes, sir.

Q. One which she had put in one of the Akron papers that she was seeking passengers to California to share expenses with her? A. Yes.

* * *

[Endorsed]: Filed January 17, 1955. [9]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 29 inclusive, contain the original—

Complaint.

Answer to Complaint.

Verdict.

Judgment on Verdict.

Motion for New Trial.

Notice of Motion for Dismissal and to Vacate Judgment and Order Shortening Time.

Notice of Appeal;

Appellant's Statement of Points Upon Which She Intends to Rely.

Appellant's Designation.

which, together with a full, true and correct copy of the Minutes of the Court on Feb. 28, 1955; and 1

(Deposition of Bessie Roth.)

volume of Reporter's Transcript of proceedings had on Jan. 18 and 19, 1955; all in said cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 1st day of April, 1955.

[Seal]

EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14713. United States Court of Appeals for the Ninth Circuit. Bessie Roth, Appellant, vs. Sammy Davis, Jr., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 4, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

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